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10	BEFORE THE
11	BOARD OF REGISTERED NURSING DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA
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13	In the Matter of the Accusation Against: Case No. 2008 - 218
14	SHARI RENEE BIRNBAUM aka SHARI RENEE NICKERSON A C C U S A T I O N
15	31325 San Eljay Cathedral City, California 92234
16	Registered Nurse License No. 419457
17	Respondent.
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19	Ruth Ann Terry, M.P.H., R.N. (Complainant), alleges:
20	<u>PARTIES</u>
21	1. Complainant brings this Accusation solely in her official capacity as the
22	Executive Officer of the Board of Registered Nursing, Department of Consumer Affairs.
23	2. On or about September 30, 1987, the Board Of Registered Nursing
24	(Board) issued Registered Nurse License Number 419457 to Shari Renee Birnbaum, also known
25	as Shari Renee Nickerson (Respondent). The license will expire on March 31, 2009, unless
26	renewed. ^{1/}
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28	1. Respondent also holds Nursing license Number 26800 in the state of Maine.

STATUTORY PROVISIONS

- 3. Business and Professions Code (Code) section 2750 provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.
- 4. Code section 2764 provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under section 2811(b) of the Code, the Board may renew an expired license at any time within eight years after the expiration.
- 5. Code section 2761(a) states, in pertinent part, that the Board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for unprofessional conduct.
 - 6. Code section 2762 states:

In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:

- (a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish or administer to another, any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as defined in Section 4022.
- (e) Falsify, or make grossly incorrect, grossly inconsistent, or unintelligible entries in any hospital, patient, or other record pertaining to the substances described in subdivision (a) of this section.

COST RECOVERY

7. Code section 125.3 provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

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DRUGS

- 8. "Morphine Sulfate" is a Schedule II controlled substance as designated by Health and Safety Code section 11055(b), and is a dangerous drug pursuant to Business and Professions Code section 4022.
- 9. "Demerol," a brand of meperidine hydrochloride, a derivative of pethidine, is a Schedule II controlled substance as designated by Health and Safety Code section 11055(c), and is a dangerous drug pursuant to Business and Professions Code section 4022.
- 10. "Marijuana" is a Schedule I controlled substance as designated by Health and Safety Code section 11054(d), and is a dangerous drug pursuant to Business and Professions Code section 4022.

FIRST CAUSE FOR DISCIPLINE

(Falsified, Made Incorrect or Inconsistent Entries In Hospital or Patient Records)

11. Respondent is subject to discipline under Code section 2761(a), on the grounds of unprofessional conduct as defined in Code section 2762(e), in that while employed as a registered nurse at Eisenhower Memorial Hospital, Rancho Mirage, California, Respondent falsified, made grossly incorrect, grossly inconsistent or unintelligible entries in hospital or patient records in the following respects, based on a random review of patient charts.

FEBRUARY 20, 2004, through FEBRUARY 29, 2004

Patient A:

a. On or about February 28, 2004, at 1441 hours, Respondent signed out a 10 mg. Morphine injectable for administration, and charted the administration of 2 mg. of the Morphine at 1345 hours, which is 56 minutes prior to signing out the medication. In addition, Respondent failed to account for the disposition of the remaining 8 mg. of medication in any hospital or patient record.

Patient C:

b. On or about February 28, 2004, at 1610 hours, Respondent signed out a 10 mg. Morphine injectable for administration, but failed to account for the disposition of the

medication in any hospital or patient record. Furthermore, the patient was discharged at 1545 hours, which is 25 minutes prior to signing out the medication.

Patient D:

c. On or about February 28, 2004, at 1610 hours, Respondent signed out a 10 mg. Morphine injectable for administration, but failed to account for the disposition of the medication in any hospital or patient record. Furthermore, the patient was discharged at 1320 hours, which is 2 hours and 50 minutes prior to signing out the medication.

Patient E:

d. On or about February 28, 2004, at 1752 hours, Respondent signed out a 10 mg. Morphine injectable for administration, but failed to account for the disposition of the medication in any hospital or patient record. Furthermore, the patient was discharged at 1610 hours, which is 1 hour and 42 minutes prior to signing out the medication.

Patient F:

- e. On or about February 28, 2004, at 1752 hours, Respondent signed out a 10 mg. Morphine injectable for administration, but failed to account for the disposition of the medication in any hospital or patient record. Furthermore, the patient was discharged at 1730 hours, which is 22 minutes prior to signing out the medication.
- f. On or about February 29, 2004, at 1159 hours, Respondent signed out a 10 mg. Morphine injectable for administration, but failed to account for the disposition of the medication in any hospital or patient record. Furthermore, the patient was discharged on February 28, 2004.

Patient G:

g. On or about February 29, 2004, at 1158 hours, Respondent signed out a 10 mg. Morphine injectable for administration, but failed to account for the disposition of the medication in any hospital or patient record. Furthermore, the patient was discharged on February 28, 2004.

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h. On or about February 29, 2004, at 1345 hours, Respondent signed out a 10 mg. Morphine injectable for administration, but failed to account for the disposition of the medication in any hospital or patient record. Furthermore, the patient was discharged on February 28, 2004.

Patient H:

 On or about February 29, 2004, at 1158 hours, Respondent signed out a 10 mg. Morphine injectable for administration, but failed to account for the disposition of the medication in any hospital or patient record.

Patient I:

j. On or about February 29, 2004, at 1344 hours, Respondent signed out a 10 mg. Morphine injectable for administration, but failed to account for the disposition of the medication in any hospital or patient record.

Patient J:

k. On or about February 29, 2004, at 1344 hours, Respondent signed out a 10 mg. Morphine injectable for administration, but failed to account for the disposition of the medication in any hospital or patient record.

Patient K:

- l. On or about February 20, 2004, at 1733 hours, Respondent signed out a 10 mg. Morphine injectable for administration, but failed to account for the disposition of the medication in any hospital or patient record. Furthermore, the patient was discharged on February 20, 2004, at 1640 hours, which is 53 minutes prior to signing out the medication.
- m. On or about February 20, 2004, at 1744 hours, Respondent signed out a 10 mg. Morphine injectable for administration, but failed to account for the disposition of the medication in any hospital or patient record. Furthermore, the patient was discharged on February 20, 2004, at 1640 hours, which is 1 hour and 4 minutes prior to signing out the medication.

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Patient L:

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- n. On or about February 20, 2004, at 1733 hours, Respondent signed out a 10 mg. Morphine injectable for administration, but failed to account for the disposition of the medication in any hospital or patient record. Furthermore, the patient was discharged on February 20, 2004, at 1600 hours, which is 1 hour and 33 minutes prior to signing out the medication.
- o. On or about February 20, 2004, at 1753 hours, Respondent signed out a 10 mg. Morphine injectable for administration, but failed to account for the disposition of the medication in any hospital or patient record. Furthermore, the patient was discharged on February 20, 2004, at 1600 hours, which is 1 hour and 53 minutes prior to signing out the medication.

Patient M:

- p. On or about February 24, 2004, at 1601 hours, Respondent signed out a 10 mg. Morphine injectable for administration, but failed to account for the disposition of the medication in any hospital or patient record. Furthermore, the patient was discharged on February 24, 2004, at 1100 hours, which is 5 hours and 1 minute prior to signing out the medication.
- q. On or about February 24, 2004, at 1655 hours, Respondent signed out a 10 mg. Morphine injectable for administration, but failed to account for the disposition of the medication in any hospital or patient record. Furthermore, the patient was discharged on February 24, 2004, at 1100 hours, which is 5 hours and 55 minutes prior to signing out the medication.
- r. On or about February 24, 2004, at 1831 hours, Respondent signed out a 10 mg. Morphine injectable for administration, but failed to account for the disposition of the medication in any hospital or patient record. Furthermore, the patient was discharged on February 24, 2004, at 1100 hours, which is 7 hours and 31 minutes prior to signing out the medication.

JANUARY 1, 2004, through FEBRUARY 3, 2004

Patient AA:

s. On or about January 19, 2004, at 1940 hours, Respondent signed out a 10 mg. Morphine injectable for administration, but failed to account for the disposition of the medication in any hospital or patient record.

Patient BB:

t. On or about January 19, 2004, at 1858 hours, Respondent signed out one 50 ml. Morphine PCA (patient controlled analgesic) for administration, but failed to account for the disposition of the medication in any hospital or patient record.

Patient CC:

u. On or about January 19, 2004, at 1940 hours, Respondent signed out a 10 mg. Morphine injectable for administration, but failed to account for the disposition of the medication in any hospital or patient record.

Patient DD:

v. On or about February 3, 2004, at 1637 hours, Respondent signed out a 10 mg. Morphine injectable for administration, but failed to account for the disposition of the medication in any hospital or patient record.

Patient EE:

w. On or about February 3, 2004, at 1726 hours, Respondent signed out a 10 mg. Morphine injectable for administration, but failed to account for the disposition of the medication in any hospital or patient record.

Patient FF:

x. On or about February 3, 2004, at 1552 hours, Respondent signed out a 10 mg. Morphine injectable for administration, but failed to account for the disposition of the medication in any hospital or patient record.

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1 Patient GG: 2 On or about February 3, 2004, at 1718 hours, Respondent signed out two у. (2) 10 mg. Morphine injectables for administration, but failed to account for the disposition of 3 4 the medication in any hospital or patient record. 5 Patient II: б On or about January 2, 2004, at 1528 hours, Respondent signed out a z. 10 mg. Morphine injectable for administration, but failed to account for the disposition of the 7 medication in any hospital or patient record. 9 Patient JJ: On or about January 2, 2004, at 1700 hours, Respondent signed out a aa. 10 mg. Morphine injectable for administration, but failed to account for the disposition of the medication in any hospital or patient record. Patient KK: bb. On or about January 2, 2004, at 1711 hours, Respondent signed out a 10 mg. Morphine injectable for administration, but failed to account for the disposition of the medication in any hospital or patient record. Patient LL: On or about January 2, 2004, at 1712 hours, Respondent signed out a cc. 10 mg. Morphine injectable for administration, but failed to account for the disposition of the medication in any hospital or patient record. Patient MM: On or about January 2, 2004, at 1658 hours, Respondent signed out a dd. 10 mg. Morphine injectable for administration, but failed to account for the disposition of the

Patient NN:

medication in any hospital or patient record.

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On or about January 2, 2004, at 1658 hours, Respondent signed out a ee. 10 mg. Morphine injectable for administration, but failed to account for the disposition of the medication in any hospital or patient record.

MAY 7, 2001 through AUGUST 20, 2001

Patient AAA:

- ff. On or about August 20, 2001, at 1259 hours, Respondent signed out a 10 mg. Morphine injectable for administration, but failed to account for the disposition of the medication in any hospital or patient record.
- gg. On or about August 20, 2001, at 1355 hours, Respondent signed out a 10 mg. Morphine injectable for administration, but failed to account for the disposition of the medication in any hospital or patient record.
- hh. On or about August 20, 2001, at 1432 hours, Respondent signed out a 50 mg. Demerol injectable for administration, and documented that she wasted 25 mg. at 1701 hours, which is 2 hours and 39 minutes after withdrawing the medication. Furthermore, Respondent failed to account for the disposition of the remaining 25 mg. of medication in any hospital or patient record.
- ii. On or about August 20, 2001, at 1701 hours, Respondent signed out a 10 mg. Morphine injectable for administration, and documented that she wasted 4 mg. at 1701 hours, but failed to account for the disposition of the remaining 6 mg. of medication in any hospital or patient record.

Patient BBB:

- jj. On or about August 20, 2001, at 1355 hours, Respondent signed out a 25 mg. Demerol injectable for administration, and documented that she wasted 12.5 mg. at 1624 hours, which is 2 hours and 29 minutes after withdrawing the medication. Furthermore, Respondent failed to account for the disposition of the remaining 12.5 mg. of medication in any hospital or patient record.
- kk. On or about August 20, 2001, at 1431 hours, Respondent signed out a 10 mg. Morphine injectable for administration, but failed to account for the disposition of the medication in any hospital or patient record.

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Patient CCC:

ll. On or about June 4, 2001, at 1217 hours, Respondent signed out a 10 mg. Morphine injectable for administration, but failed to account for the disposition of the medication in any hospital or patient record.

Patient DDD:

mm. On or about June 4, 2001, at 0954 hours, Respondent signed out a 100 mg. Demerol injectable for administration, but failed to account for the disposition of the medication in any hospital or patient record.

nn. On or about June 4, 2001, at 1304 hours, Respondent signed out a 50 mg. Demerol injectable for administration, but failed to account for the disposition of the medication in any hospital or patient record.

Patient EEE:

- On or about May 7, 2001, at 1220 hours, Respondent signed out a 10 mg. Morphine injectable for administration, but failed to account for the disposition of the medication in any hospital or patient record.
- pp. On or about May 7, 2001, at 1318 hours, Respondent signed out a 10 mg. Morphine injectable for administration, and documented that she wasted 6 mg. at 1347 hours, which is 29 minutes after withdrawing the medication. Furthermore, Respondent failed to account for the disposition of the remaining 4 mg. of medication in any hospital or patient record.

Patient FFF:

- qq. On or about May 8, 2001, at 0941 hours, Respondent signed out a 10 mg. Morphine injectable for administration, but failed to account for the disposition of the medication in any hospital or patient record.
- rr. On or about May 8, 2001, at 0951 hours, Respondent signed out a 25 mg. Demerol injectable for administration, and documented that she wasted 15 mg. at 1113 hours, which is 1 hour and 22 minutes after withdrawing the medication. Furthermore, Respondent failed to account for the disposition of the remaining 10 mg. of medication in any hospital or patient record.

SECOND CAUSE FOR DISCIPLINE

(Obtained, Possessed and Furnished Controlled Substances)

10. Complainant incorporates by reference paragraphs 1 through 9, above, including all subparagraphs, as though fully set forth herein. Respondent is subject to discipline under Code section 2761(a) on the grounds of unprofessional conduct as defined in Code section 2762(a), in that while employed as a registered nurse at Eisenhower Medical Center, Respondent did the following:

MAY 2001 through AUGUST 2001

- a. Obtained Morphine and Demerol, controlled substances, by fraud, deceit, misrepresentation, or subterfuge, or by the concealment of a material fact in violation of Health and Safety Code section 11173(a) by withdrawing medication purportedly for administration to various patients and then taking it for her own use or to furnish to another.
- b. Possessed Morphine and Demerol, controlled substances, in violation of Code section 4060, in that Respondent did not have a prescription for these controlled substances.
- c. Furnished or administered Morphine and Demerol, controlled substances, without direction to do so from a licensed physician and surgeon, dentist or podiatrist.

JANUARY, 2004, through FEBRUARY, 2004

- d. Obtained Morphine, a controlled substances, by fraud, deceit, misrepresentation, or subterfuge, or by the concealment of a material fact in violation of Health and Safety Code section 11173(a) by withdrawing medication purportedly for administration to various patients and then taking it for her own use or to furnish to another.
- e. Possessed Morphine, a controlled substance, in violation of Code section 4060, in that Respondent did not have a prescription for that controlled substance.
- f. Furnished or administered Morphine, a controlled substance, without direction to do so from a licensed physician and surgeon, dentist or podiatrist.

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THIRD CAUSE FOR DISCIPLINE

(Possessed and Self-Administered a Controlled Substance)

- 12. Respondent is subject to discipline under Code section 2761(a) on the grounds of unprofessional conduct as defined in Code section 2762(a), in that on or about March 15, 2004, while a licensed registered nurse, Respondent did the following:
- a. Possessed Marijuana, a controlled substance, in violation of Code section 4060, in that Respondent did not have a prescription for that controlled substance.
- b. Self-administered Marijuana, a controlled substance, without direction to do so from a licensed physician and surgeon, dentist or podiatrist.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

- Revoking or suspending Registered Nurse License Number 419457, issued 1. to Shari Renee Birnbaum, also known as Shari Renee Nickerson;
- Ordering Shari Renee Birnbaum, also known as Shari Renee Nickerson, 2. to pay the Board of Registered Nursing the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and,
 - Taking such other and further action as deemed necessary and proper. 3.

Board of Registered Nursing Department of Consumer Affairs

State of California

Complainant

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